IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

CRIMINAL APPLICATION NO.5 OF 2005

1.Kiran Vitthal Vaidya and Anr. .. ..Petitioners
Versus
State of Maharashtra .. ..Respondent

Mr.A.P.Mundargi with Smt. Revati Mohite-Dere for applicants
Mr.K.V.Saste, APP for respondent

CORAM : S.C.DHARMADHIKARI,J.

DATE : 18TH NOVEMBER, 2005

P.C.:

1. By this criminal application petitioners seeks anticipatory bail in the event of their arrest in connection with C.R.No.38 of 2004 registered with G.B.C.D., CID, Mumbai.

2. It is a common ground that the said C.R. alleges commission of offences under the Maharashtra Protection of Investors and Depositors Act, as well as Section 406, 420 r/2 34 of the Indian Penal Code.

3. This Court, despite the rejection of the petitioners' application for anticipatory bail by the Trial Court as early as on 28th December, 2004, protected them vide order dated 4th January 2005. The protection has continued till date. The interim protection is not misused by them. It is nobody's case that Investigation is hampered in any manner. Whenever the present application was being considered, it was pointed out that the provisions of MPID Act are subject matter of challenge in several Writ Petitions, pending in this Court. It was then pointed out that a reference was made by a Division Bench of this Court to a Full Bench and the learned Chief Justice was requested to constitute a Full Bench for deciding, inter alia, the legality and validity of the said enactment. The principal ground of attack was lack of legislative competence of the State Legislative in enacting such a statute.

4. Now the Full Bench of this Court has decided the reference and it is declared that the provisions of the said Act are beyond the competence of the State legislature, ultravires and of no legal effect. The

decision of the Full Bench to this effect is subject matter of challenge before the Hon'ble Supreme Court and the proceedings are pending. The learned APP has orally applied for adjournment on the ground that the Supreme Court is also considering State's plea for Interim Relief.

5. I see no reason for further adjournment. If the Supreme Court permits continuation of the cases/prosecutions under MPID Act, obviously the prosecution is entitled to do so. This order does not prohibit such continuation and if the Supreme Court orders as above, its order is binding on all Courts. The present application is for Anticipatory Bail and need not be kept pending. More so, when the decision of this Court on MPID Act is subject matter of challenging pending Appeals in the Supreme Court. Since the C.R. alleges commission of offences other than the M.P.I.D. Act and more particularly under Section 406 and 420 of I.P.C., interest of justice would be served, if the present application is disposed of by the following order -

(i) The interim protection granted by this

court in this application on 4th January 2005 would continue till a charge-sheet is filed invoking appropriate provisions of law. In other words, the applicants shall be enlarged on bail in the event of their arrest in connection with C.R.No.38/2004 and they shall be released on bail in the sum of Rupees One lakh with one surety in the like amount.

(ii) The bail is granted subject to condition that the applicants shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of accusation against them so as to dissuade him from disclosing such facts to the Court or to the Police Officer/Investigating Agency. The applicants shall not tamper with the prosecution evidence.

(iii) Any observations made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

(iv) This order will enure to the benefit of the applicants only till charge sheet is filed. Thereafter they will be free to apply to the appropriate court for appropriate relief.

(v) The Applicants have already deposited their passport with the Investigating authority, which shall continue to be in its possession.

(vi) The Applicants shall attend the concerned police station as and when summoned and shall extend all cooperation in the investigation.

(vii) Application is disposed of in above terms.

(S.C.Dharmadhikari, J.)